

PROCEDURAL BACKGROUND OF THE CAMPAIGN FINANCE INVESTIGATION

I. BUDGET

The Committee on Government Reform and Oversight was allocated funds from the Reserve Fund established by the House of Representatives to carry out its additional responsibilities entailed in the campaign finance investigation. These funds were used to hire additional staff, purchase additional equipment, and pay for travel associated with the investigation.

In 1997, the first year of the investigation, the Committee was allocated \$3.8 million from the House Reserve Fund. The Committee spent approximately \$2.4 million on the investigation.¹ In 1998, the Committee was allocated an additional \$1.8 million from the Reserve Fund, and it expects to spend approximately two-thirds of that amount.² The minority was allocated twenty-five percent of the Committee's investigative funds and permanent funds.

The Ranking Minority Member has made a number of public statements regarding the amount of money spent by the Committee on the investigation. Congressman Waxman stated on several occasions that the Committee spent \$6 million on the campaign finance investigation. The Chairman has publicly corrected the Ranking Member, and pointed out that less than \$4 million was spent on the investigation by the majority and minority staff combined.

II. SUBPOENA POWER

Throughout the 105th Congress, the Chairman has had the power to issue subpoenas pursuant to Committee Rule 18, which reads in relevant part as follows:

The chairman of the full committee shall:

(d) Authorize and issue subpoenas as provided in House Rule XI, clause 2(m), in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the committee³

House Rules XI, clause 2(m), in turn, states:

¹ See Letter from Chairman Dan Burton to Congressman Henry Waxman, May 11, 1998.

² See Letter from Chairman Bill Thomas to Chairman Dan Burton, March 25, 1998.

³ House Committee on Government Reform and Oversight Rule 18.

The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chairman of the committee pursuant to such rules and under such limitations as the committee may prescribe.⁴

The Committee rule was adopted at the Committee's first organizational meeting of the 105th Congress, on February 12, 1997. The rules, including the subpoena rule, were adopted by unanimous voice vote.⁵ No Democrat objected to the Committee rules, and only one amendment to the rules was offered by Congressman Waxman. His amendment was accepted by unanimous voice vote.⁶ Congressman Waxman took notice of the subpoena provision in the Committee rules, but did not object to it. Rather, he asked that the Chairman consult with the minority a sufficient period of time before the issuance of the subpoena, stating that "I assume that in order for consultation with the minority be a real opportunity, that you will try to contact us in sufficient time so we can have an opportunity to discuss it."⁷ The Chairman indicated that he intended to inform the minority in advance of his intent to issue a subpoena, and has done so throughout the course of the investigation.⁸

The power delegated to the Chairman by the Committee is consistent with the past practices of the Government Reform and Oversight Committee, as well as a number of other House committees. For example, in the 105th Congress, the Committee on International Relations and the Committee on Small Business both had substantially similar rules.

In April of 1997, the Committee approved a Document Protocol. The Protocol established procedures for maintaining documents as well rules for the issuance of subpoenas, and created a working group to review the release of documents. The Document Protocol made clear that the Committee minority would be consulted prior to the issuance of all subpoenas, unless they were issued on an emergency basis.⁹ Although the Document Protocol merely codified the practices that had been agreed to at the February business meeting, Congressman Waxman changed his position and at that time objected to the Chairman's power to issue subpoenas. During the April 10, 1997, business meeting, Congressman Waxman claimed that if the protocol were adopted, it would:

Give Chairman Burton unprecedented power that no Member of Congress has ever had; and, in fact, nobody in the country has had the power that he would have

⁴ House Rule XI(2)(m)(2)(A).

⁵ Organizational Meeting, House Committee on Government Reform and Oversight, February 12, 1997, at 23.

⁶ *Id.* at 22.

⁷ *Id.* at 17.

⁸ *Id.* at 16-17.

⁹ Protocol for Documents, April 10, 1997, at (A)(2) (Exhibit 1).

invested in him. . . . I want to emphasize that no other investigation by a committee of the Congress has ever had such powers in its chairman.¹⁰

Congressman Waxman then offered an amendment to the Document Protocol that would require a Committee vote on any disputed subpoenas.

Congressman Waxman's arguments regarding the nature of the Chairman's power to issue subpoenas were false. Not only did a number of other Committees in the 105th Congress have the same power, but past Congressional committees conducting investigation had the same power. The committees conducting the Iran-Contra, October Surprise, Filegate, and Travelgate investigations all had this same subpoena power.

Under the procedures established by the April 10, 1997, Document Protocol, the Chairman provided notice to the minority when he intended to issue a subpoena.¹¹ Within a 24-hour period, the minority was to provide the Chairman with any suggestions regarding how it sought to improve or modify the subpoena.¹² After that 24-hour period, the Chairman could issue the subpoena.¹³ The Protocol also allowed the Chairman to issue subpoenas without prior notice if delay would hinder the Committee's ability to obtain certain documents or testimony.¹⁴ This authority was rarely used by the Chairman.

The Committee operated under this procedure until June 1998. At that time, the minority insisted upon a change in Committee rules as a condition for voting in support of granting immunity to four witnesses. The Chairman, after consultation with several members, offered a compromise package of rules changes, and on June 23, 1998, the Committee adopted them. With regard to subpoenas, these provisions similarly required the Chairman to provide subpoenas to the minority for a 24-hour period during which the minority could suggest modifications or object to the subpoenas.¹⁵ If the minority objected to a subpoena, the Chairman was required either to convene a meeting of the Subpoena Working Group, or bring the subpoena to a vote of the Committee.¹⁶ The Subpoena Working Group was a group composed of the Chairman, the Ranking Minority Member, the Vice Chairman, a member selected by the Chairman, and a member selected by the Ranking Minority Member.¹⁷ The Working Group was to discuss subpoenas before it, and, if it was unable to reach consensus, hold a vote on whether the Chairman should issue the subpoena.¹⁸ The Chairman agreed to be bound by the decision of the Working Group.¹⁹ This procedure has been used by the Committee since June 23, 1998.

¹⁰ Business Meeting, House Committee on Government Reform and Oversight, April 10, 1997, at 10-11.

¹¹ Protocol for Documents, April 10, 1997, at (A)(2)(a).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at (A)(2)(b).

¹⁵ Protocol for Documents, June 23, 1998, at (A)(2)(a) (Exhibit 2).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

III. DOCUMENT PROTOCOL

The April 10, 1997, Document Protocol also addressed the procedures used by the Committee to store and release documents obtained by the Committee in the course of the campaign finance investigation. The Protocol was later changed in June 1998 in such a way as to modify the document release provisions.

As initially adopted, the Protocol allowed the release of nonpublic documents through one of three means: (1) agreement between the Chairman and ranking minority member; (2) agreement or vote of the Document Working Group; or (3) vote of the full Committee.²⁰ Under the first provision, the Chairman could notify the Ranking Minority Member of his intent to release documents, and if the Chairman and Ranking Member agreed, the documents could be released.²¹ If the Chairman and Ranking Minority Member could not agree on the release of documents, the Chairman could convene a meeting of the Document Working Group to consider the release.²² The Working Group was composed of the Chairman, the Vice Chairman, the Ranking Minority Member, and two members selected by the Chairman and Ranking Minority Member, respectively.²³ the Working Group was to consider the release of documents, and attempt to reach consensus about the release of documents.²⁴ If it was unable to reach consensus, the Chairman could request the Working Group to render a vote regarding the release of documents.²⁵ This vote was to be binding upon the Chairman.²⁶

The procedure outlined in the April 10, 1997, Document Protocol was used successfully by the Committee for over one year, until it was modified by the Committee on June 23, 1998.²⁷ The vote of the Committee on June 23, 1998, modified the Protocol to eliminate the Document Working Group, and to allow only two means of document release: (1) agreement between the Chairman and Ranking Minority Member; or (2) vote by the full Committee.²⁸

IV. DEPOSITION AUTHORITY

On June 20, 1997, the House of Representatives passed H. Res. 167 to provide special investigative authorities for the Committee's campaign finance investigation. This resolution provided the Committee with the power to take depositions and interrogatories from witnesses in the investigation. Chairman Burton requested this authority to assist the Committee in its work of gathering information relevant to the campaign finance inquiry.

²⁰ Protocol for Documents, April 10, 1997, at (C)(3).

²¹ *Id.* at (C)(3)(a).

²² *Id.* at (C)(3)(b).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Business Meeting, House Committee on Government Reform and Oversight, June 23, 1998.

²⁸ See Protocol for Documents, June 23, 1998, at (C).

The powers granted to the Committee by the House of Representatives were consistent with investigative authorities granted to investigative committees in the past.

The Committee met on June 18, 1997, to adopt Committee rules 20 and 21, which governed the taking of depositions, interrogatories and letters rogatory.²⁹ The Committee passed the new rules by a vote of 22 to 17.³⁰ Later on June 18, Chairman Burton and Congressman Waxman testified before the Rules Committee on H. Res. 167. The Rules Committee then passed H. Res. 167, which was considered on the House floor on June 20, 1997. H. Res. 167 passed the House by a vote of 216 to 194.³¹

The major power granted to the Committee by H. Res. 167 was to conduct staff depositions. Under the procedures established by H. Res. 167 and Committee Rule 20, the Chairman had the authority to order the taking of depositions of witnesses after consulting with the Ranking Minority Member.³² This power was consistent with the power granted to chairmen in the Congressional investigations relating to the Assassinations Investigation, Iran-Contra, and October Surprise.³³ The resolution also authorized the Chairman to issue interrogatories to witnesses, to be answered under oath.³⁴ Finally, it authorized the Committee to apply for the issuance of letters rogatory and other forms of international assistance.³⁵

V. RULES REQUIREMENTS

A. Committee Action and Vote

Pursuant to clause 2(l)(2)(A) and (B) of House Rule XI, a majority of the Committee having been present, the resolution recommended in this report was approved by a vote of _____ ayes to _____ nays.

B. Statement of Committee Oversight Findings and Recommendations

Pursuant to clause 2(l)(3)(A) of House Rule XI and clause 2(b)(1) of House Rule X, the findings and recommendations of the Committee are contained in the foregoing chapters of this report.

C. Statement on New Budget Authority and Related Items

Pursuant to clause 2(l)(3)(B) of House Rule XI and Section 308(a)(1) of the Congressional Budget Act of 1974, the Committee finds that no new budget authority,

²⁹ See Business Meeting, House Committee on Government Reform and Oversight, June 18, 1997.

³⁰ *Id.* at 234.

³¹ Congressional Record, June 20, 1997, at H4091.

³² House Resolution 167 at 2; House Committee on Government Reform and Oversight Rule 20.

³³ See Hearing, House Committee on Rules, June 18, 1997, at 8-11 (testimony of Chairman Dan Burton).

³⁴ House Resolution 167 at 2.

³⁵ *Id.*

new spending authority, new credit authority, or an increase or decrease in revenues or tax expenditures result from an enactment of this resolution.

D. Statement of CBO Cost Estimate and Comparison

Pursuant to House Rule XI(2)(1)(3)(C) and Section 403(a) of the Congressional Budget Act of 1974, the Committee finds that a statement of Congressional Budget Office cost estimate is not required as this resolution is not of a public character.

E. Statement of Constitutional Authority

Pursuant to House Rule XI(2)(1)(4), the Committee finds that a statement of Constitutional authority to enact is not required as this resolution is not of a public character.

F. Changes in Existing Law

Pursuant to House Rule XIII(3), the Committee finds that a statement of changes in existing law is not necessary, as the resolution does not alter existing law.

G. Statement of Committee Cost Estimate

Pursuant to House Rule XIII(7)(a), the Committee finds that a statement of Committee cost estimate is not necessary as this resolution is not of a public character.

H. Statement of Federal Mandates

Pursuant to the Unfunded Mandates Reform Act and Section 423 of the Congressional Budget Act of 1974, the Committee finds that a statement of federal mandates is not necessary as this resolution is not of a public character.